



40B Overview and 2 Beal Street

Town of Hingham
October 18, 2016

Background



- The immediate question about developing 2 Beal Street is part of a larger discussion about Hingham's 40B status
- The purpose of this presentation is to:
 - Define terms and provide an overview of the 40B process
 - Summarize Hingham's 40B status
 - Highlight pending and potential 40B projects
 - Identify and evaluate options
 - Describe timing and potential next steps
- Hingham is committed to affordable housing
 - One of a handful of towns in the Commonwealth to create and fund an Affordable Housing Trust

Definitions



- **Chapter 40B**

- State law enacted in 1969 to address state-wide shortage of affordable housing
- Requires communities to have at least 10% of their housing stock be affordable

- **Department of Housing and Community Development (DHCD)**

- Department within MA State government that regulates and administers Chapter 40B

- **Area Median Income (AMI)**

- Defines household income eligibility for affordable housing
- Per state defined guidelines, an applicant's household income must not exceed 80% of the Area Median Income (AMI)

Boston-Cambridge-Quincy MA-NH HUD Metro FMR Area					
2016 Area Median Income Limits					
Household Size	1-person	2-person	3-person	4-person	5-person
Income Limit (80%)	\$51,150	\$58,450	\$65,750	\$73,050	\$78,900

Definitions



- **Subsidized Housing Inventory (SHI)**

- Official list of qualifying affordable housing projects maintained by DHCD
- For a project to qualify, at least 25% of its units must be affordable
- # units included in SHI depends on type of housing:
 - Home ownership: **25%** units added to SHI
 - Rentals: **100%** units added to SHI

- **Housing Appeals Committee (HAC)**

- 5-member board within DHCD that adjudicates 40B disputes
- 3 members appointed by Director of DHCD, 2 members appointed by Governor

- **Housing Production Plan (HPP)**

- A town's strategy for (a) planning for housing to meet its affordable housing needs consistent with Chapter 40B and (b) producing housing units in accordance with the Plan
- A town's HPP must be approved by DHCD

Definitions



- **Safe Harbors**

- When reached, safe harbors allow a ZBA to deny or condition any 40B application
- Following safe harbors are being discussed in Hingham:
 - **10% Safe Harbor:**
 - Achieving the necessary number of affordable housing units to reach the DHCD requirement (referred to by DHCD as the *statutory minima*)
 - The Town maintains that it has reached the **10% safe harbor**
 - **1 year Safe Harbor:**
 - Occurs when a community permits an affordable housing project that exceeds 2% of it's total housing stock
 - 190 Avalon II at Hingham Shipyard units permitted 5/17/16 - "Avalon Safe Harbor"
 - **Housing Production Plan Safe Harbor "HPP Safe Harbor":**
 - Once DHCD approves a town's *Housing Production Plan*, and the town meets the goals of the Plan, the town can reach a safe harbor
 - » 0.5% housing units (44 in Hingham): 1 year safe harbor
 - » 1.0% housing units (88 in Hingham): 2 year safe harbor



How Chapter 40B Works

- If **less** than 10% housing is 'affordable' **when a 40B permit is filed**, and no other safe harbor applies:

The ZBA is **limited**
in its ability to
enforce local
regulations

- If **more** than 10% housing is affordable **when a 40B permit is filed**:

ZBA may enforce
all applicable
local regulations

*Until a Town has achieved 10%,
any 40B project can bypass many of our local regulations.
This can happen anywhere.*

Examples of local regulations that can be bypassed



- **Zoning by-laws**
 - Land use
 - Maximum height
 - Density (# units)
 - Frontage
 - Area
- **Wetlands**
- **Subdivision regulations**
- **Septic regulations**
- **Site plan review**
 - Layout
 - Scale
 - Appearance
 - Parking
 - Traffic
- **General by-laws**
 - e.g., Street Excavation Regulations

*Any, some, or all of these regulations
can be bypassed for a single project.*

Examples of Hingham 40B projects where local regulations could not be enforced



Local regulation not enforced	Project	Allowed by local regulations	Built
Maximum height	Avalon Hingham Shipyard	3-story building	5-story building
Minimum frontage and area	Damon Farms	2-3 single-family homes	8 townhouse-style units
Use Regulations	Derby Brook	Single-family homes	20 townhouse-style units
Street Excavation Regulations	Craftsman Village	No disturbance within 5 years of paved street	Utility connections made within 5 years of paving Beal Street
Subdivision Regulations	Lincoln Hill/Adams Court	22'-wide road	18'-wide road
Wetlands by-law and regulations	Linden Ponds	No building within 50' of wetlands	Buildings within 25' of wetlands

Hingham's 40B status as of 9/15/16



DHCD and Hingham disagree about our affordable housing count

	Hingham's position	DHCD's position
Total Housing Units	8,841	8,841
Subsidized Housing Inventory (SHI)	1598	779
SHI %	18.07%	8.81%

The disagreement relates to Linden Ponds:

- Town's position: Linden Ponds is rental housing, 100% units should count
- In 2005, DHCD notified the Town that it would count 25% of the units
- Hingham challenged this ruling to the MA Supreme Judicial Court (SJC)
- SJC declined to rule since there was not an active or pending case
 - Case has still not been fully litigated through the courts

Litigation History



• Hingham's recent challenges of DHCD's count of Linden Ponds

2012-2013

Avalon

(Recreation Park Drive)

177 Units

- ZBA asserted that the Town has achieved 10%
- DHCD and Housing Appeals Committee ruled against Hingham
- ZBA appealed HAC decision to the Superior Court
- Avalon withdrew permit when Town agreed to purchase land
- **Case was dismissed**

2014

SEB

(Village on Main)

16 Units

- ZBA asserted that the Town has achieved 10%
- DHCD and Housing Appeals Committee ruled against Hingham
- ZBA granted permit with conditions and re-asserted the Town's 10% position
- SEB appealed permit
- A new use (non-40B) has been proposed for the property
- **Case pending with Housing Appeals Committee (but a dismissal has been requested)**

2016

Riverstone

(Viking Lane)

36 Units

- ZBA asserted that the Town has achieved 10%
- DHCD ruled against Hingham
- ZBA appealed to Housing Appeals Committee
- **Case pending with Housing Appeals Committee**

Potential 40B process for ZBA to assert 10% issue



* While every application is unique, this diagram attempts to show the levels of review available for appeals

How many units are needed to achieve an “uncontested” 10%?



$$\text{Calculation: } \frac{\text{Subsidized Housing Inventory (SHI) units}}{\text{Total housing units (updated every 10 years)}}$$

- To achieve DHCD 10%:

105
additional units
through 2020

47-68
incremental units
through 2030*

* Estimate based on forecasted new housing units

Pending and Potential 40B Projects



	Total Project Units	# SHI Units
Permitting in Process		
SEB (Village on Main)	16	4*
Riverstone (Viking Lane)	36	9*
Habitat for Humanity	1	1
Broadstone Bare Cove (230 Beal Street)	220	220
Potential (developers have approached Town with concept)		
Abington Street	24	24
Whiting Street	2-3	2-3
Industrial Park	TBD	TBD
Bristol Properties	TBD	TBD
Schofield Road / Main Street	TBD	TBD
Selectmen's Parcel (2 Beal Street)	TBD	TBD

* Litigation pending

Selectmen's Parcel (2 Beal Street)



- Originally authorized by Town Meeting for 20-40 single family home development
- 2016: Town Meeting authorizes rental affordable assisted living facility
- Request for proposal issued May 2016
 - 3 of 4 bids determined to be non-responsive
 - Responsive bid required \$2-3 million Town contribution of CPA funds and financing mechanisms that **could not be completed before Avalon Safe Harbor expires on 5/16/17**

Options



2 Beal Street Options:

- 1) Continue to pursue 80-100 unit rental affordable assisted living facility**
- 2) Develop 20-40 single family homes (25% affordable)**
- 3) Consider approximately 100 unit rental 40B**
- 4) Do not develop**

Other 40B issues:

- 5) Continue to litigate the count of the Linden Ponds units**
- 6) Obtain additional Safe Harbor(s) through compliance with a Housing Production Plan**

2 Beal Street Options



	1. 80-100 unit Rental affordable assisted living	2. 20-40 Single family homes	3. Approximately 100 unit Rental 40B	4. Do not develop
Impact on SHI	100% units	25% units	100% units	0 units
Is Town Meeting approval required?	Received	Received	Yes	NA
Can it be permitted before the Avalon Safe Harbor expires?	No	No	Possible	NA
Advantages	Lower impact on roads and some Town services than other types of development	Town successfully completed pilot (Craftsman Village)	Potential to achieve uncontested 10% affordable housing requirement before Avalon Safe Harbor expires (5/16/17) Revenue potential from sale of land	No impact on roads, Town services
Disadvantages	Requires significant Town contribution Little or no revenue from sale of land	Fewer total units to add to affordable housing count	Higher impact on roads and Town services than other types of development	Not adding to affordable housing count or addressing any affordable housing needs

Other 40B issues

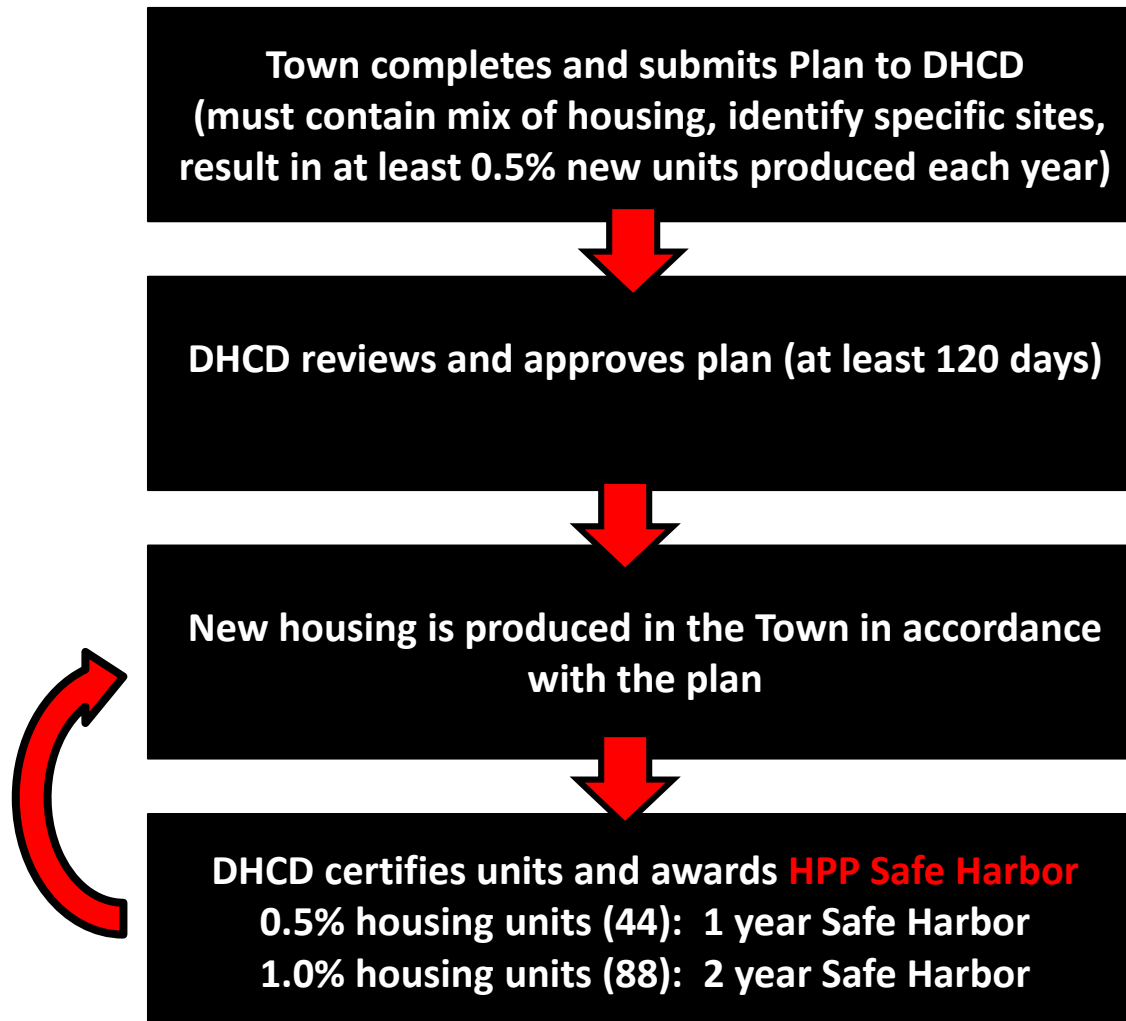


	5. Continue to litigate Linden Ponds Count	6. Housing Production Plan
Advantages	Town could prevail in litigation	Creates additional safe harbor(s) upon meeting production goals
Disadvantages	<p>Litigation time and cost may be between \$50,000 - \$200,000</p> <p>If Town does not prevail, every project that has been filed must be reviewed within the 40B guidelines</p>	<p>Production requirements cannot be met before existing Avalon Safe Harbor expires</p> <p>DHCD has not approved prior Housing Production Plans submitted by Hingham because of the 10% dispute</p> <p>So long as the 10% dispute continues, DHCD is unlikely to approve a Plan that asserts Hingham is beyond 10%</p>

Housing Production Plan Process



- HPP Safe Harbor is granted when new housing is produced in a town



Status and Next Steps



- 9/21: Town issued Request for Proposal for 40B rental project
- 10/21: Bids due
- By 10/27: Board of Selectmen vote whether to:
 - Award RFP
 - Call Special Town Meeting
- 11/17: Special Town Meeting (if called)
 - Last possible date to hold meeting to allow time for the permitting process to be completed within the Avalon Safe Harbor period